

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

DEFIANCE ENERGY LLC

Employer

and

Case No. 8-RC-16269

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 18S, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:¹

All full-time and regular part-time production and maintenance employees employed by Defiance Energy at the power plant operated by the Employer and located at General Motors' Foundry at 25427 State Highway 281 East, Defiance, Ohio, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

There are approximately seven employees in the bargaining unit.

Defiance Energy LLC (the Employer) is an Ohio corporation operating a power plant located at the General Motors foundry in Defiance, Ohio. The Employer has a service agreement with General Motors Corporation (GM) to operate this power plant. The Petitioner filed a petition seeking to represent employees of Defiance Energy LLC on September 28, 2001. The only issue presented at the hearing is whether an election is warranted in light of GM's indication that it is considering changing its service agreement with the Employer by replacing its employees with GM employees.

The Employer contends that the direction of an election at this time is inappropriate because GM intends to modify the service agreement by replacing their employees with GM employees at the power plant, and hence, the petition should be dismissed. In the alternative, the Employer requests that the case be stayed pending a determination regarding a continuation of the Employer's operation at GM. In support of its arguments the Employer notes that UAW Local 211, which represents the GM employees at the foundry, has filed grievances against GM

for subcontracting the work at the power plant to the Employer. These grievances seek to have GM employees perform the work presently done by the Employer's seven employees. The Petitioner, on the other hand, argues that GM's contract with the UAW is irrelevant to this proceeding and does not bar the instant petition. Rather, the Petitioner contends that an immediate election should be directed.

Based on the record as a whole, I find that the Employer's argument is without merit and conclude that an election should be directed in this case. The record does not establish any definitive evidence that the Employer's present workforce at the GM power plant would contract because GM has not made a final decision concerning its service agreement with the Employer. Therefore, the possibility of a reduction in force or the cessation of operations remained uncertain as of the date of the hearing. It is well settled under Board law that a mere reduction in the number of unit employees in and of itself is not sufficient to postponing an election. Wm. L. Hoge & Co., Inc., 103 NLRB 20 (1953). Further, mere speculation as to the uncertainty of future operations is not sufficient to warrant dismissal of the petition. Canterbury of Puerto Rico, 225 NLRB 309 (1976). In Gibson Electric, 226 NLRB 1063, the Board directed an election because the employer's initial anticipated completion date of the project was inaccurate. In so concluding, the Board noted that since the jobsite was still in progress at the time of its decision there was no impediment to an immediate election.

In order to warrant an immediate election where there is definite evidence of either an expanding or contracting unit, the present workforce complement must be "substantial and representative" of the ultimate complement both as to the number of employees and the number and kind of job classifications. Douglas Motors Corp., 128 NLRB 307 (1960); *see also* Plum Creek Lumber Co., Inc., 214 NLRB 72 (1974). In Douglas Motors, the Board dismissed a

¹ The unit description is in accord with a stipulation entered into by the parties.

representation petition where the employer established at the hearing that it was in the process of eliminating its production operations and converting its operation to a warehousing and distribution center, thereby reducing employees in the proposed unit from 40 to 10 and the number of job classifications from 16 to 1. *Id.*

Unlike the employer in *Douglas Motors*, the Employer herein did not present any definitive evidence that its workforce would contract. Instead, the Employer only presented evidence concerning the possibility of a reduction in force or the cessation of operations in the future. In support of its position, the Employer submitted a letter dated October 11, 2001 from Alfred Hildreth, a manager at GM Worldwide, to Philip Damiani, President of DQE Energy Services. The letter stated that GM is “reviewing its option of modifying our current services agreement so as to use our employees to provide energy services under your firm’s technical direction.” As indicated by the letter, GM has not made a final decision concerning the workforce at the power plant. Rather, the record indicates that GM intends to continue working with Defiance Energy under a modified service agreement.

The Employer also submitted a grievance between the UAW and GM to support its position that GM intends to replace its employees at the power plant. I find that the grievance filed under the contract between the UAW and General Motors does not bar the direction of an election. Neither General Motors nor the UAW is a party to the instant petition. Though the grievance filed by the UAW may affect GM’s decision-making process concerning its service contract with the Employer, it does not preclude the direction of an election in this case.

I find that the record in this case does not clearly establish a definitive reduction in force, a cancellation of the agreement between the Employer and GM, or any evidence that establishes

a “fundamental change in the nature of the Employer’s business operation” so as to warrant a dismissal of the petition under *Douglas Motors*.

Based upon the foregoing and the record as a whole, I find that the Employer’s argument to dismiss the petition or to stay the case for further information is without merit. Accordingly, I find that an immediate direction of an election is warranted.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees of Defiance Energy LLC in the bargaining unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the **INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 18S, AFL-CIO**.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994)**. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by November 9, 2001.

DATED at Cleveland, Ohio this 26th day of October, 2001.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

347-4040